In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 1281 of 2006
Date of Decision: 20.11.2006

Mulkh Raj and another …Petitioners

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and another …Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. HO Attri, Advocate, for the petitioners
Mr. Gaurav Mohunta, Advocate the respondents

M.M. KUMAR, J.

Petitioner no.1 was initially appointed as on work charged basis with the Electricity Board on 7.11.1968 and he worked as such upto 16.2.1984. His services were regularised on 17.2.1984 as Store Munshi. He was lateron promoted as Assistant Store Keeper and ultimately he retired on 3.6.2005. Petitioner no. 2 also joined on work charged basis on 21.9.1970 and served as such upto 18.5.1986. He was promoted as Assistant Store Keeper and ultimately he retired on 31.3.2005. While calculating the pensionary benefits and pension the services rendered by the petitioners on work charged basis was not counted towards service benefits. It is alleged that on the basis of the government circular dated 10.5.2005 (Annexure P.1), they are entitled to the counting of service rendered by them on work charged basis for the purposes of pension. The petitioners also filed various representations and when no response was received they ultimately served a legal notice on 8.11.2005 (Annexure P.2). The respondents

rejected the legal notice dated 8.11.2005 on 27.12.2005 (Annexure P.3).

We have heard the learned counsel for the parties at some length and find that the case of the petitioners is squarely covered by the judgment of Full Bench of this Court in the case of **Kesar Chand v. State of Punjab, 1988 (2) PLR 223**. The principle of law laid down by their Lordships' of the Full Bench is that the work charge service rendered by an employee followed by regularisation is entitled to be considered as a qualifying service for the purposes of pension. Even otherwise, Rule 3.17A has now been incorporated in the Punjab Civil Service Rules, Volume II, Part-I (as applicable to Haryana) in pursuance to the judgment of the Full Bench which envisages that all service interrupted or continuous followed by confirmation has to be treated as qualifying service and the period of breaks is to be omitted while working out aggregate service. Therefore, we are of the view that the claim made by the petitioner for reckoning the ad hoc service of the petitioner as qualifying service for pension is meritorious. The view of the Full Bench is discernible from the following para:

> "Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary

> involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employees have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

The aforementioned celebrated authority in Kesar Chand's case (supra) has been followed and applied in the cases of **Hazura Singh v. State of Punjab, 2004 (1) SCT 695; Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd., 2005 (4) SCT 302** and our judgment in **Raj Kumar Sharma v. State of Haryana** (C.W.P. No. 14774 of 2004, decided on 18.4.2006).

Thus, on principle, precedents as well as the rules, the claim of the petitioner deserves to be accepted. Accordingly, we allow the writ petition and direct the respondents to tag the period of ad hoc service rendered by the petitioners with regular service by treating the same as qualifying service by excluding the period of notional break, if any. The pay/pension of the petitioner be accordingly recalculated and monetary/retiral benefits in the form of arrears of pension/gratuity etc. accruing therefrom be paid to them. However, the arrears resulting from re-calculation of pay/pension after adding the aforementioned period of ad hoc service shall be confined only to three years two months preceding the date of filing of the writ petition, which is 25.1.2006. The needful shall be done within a period of two months from the date a certified copy of this order is presented to the respondents.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

20.11.2006
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